APPENDIX B

DEVELOPMENT OF A REQUEST FOR INFORMATION OR ADVANCE NOTICE OF PROPOSED RULEMAKING

1. OSHA assigns a staff "team" to IAQ. That team is composed of representative of Health Standards, the Solicitor's office, OSHA's Office of Regulatory Analysis (economist) and, possibly, others. The team is responsible for all staff work on the issue they are handling.

   OSHA's IAQ team is currently evaluating the available data and drafting a document for possible publication. Whether a Request for Information (RFI) or an Advance Notice of Proposed Rulemaking (ANPR), the draft document will ask a series of questions and ask for data relating to those questions. Specifically, the document will examine such issues as ventilation and ventilation systems maintenance, existing state, local and employer smoking policies, ETS exposure assessments and health effects. Examples of questions to be posed might include: What effect does increased ventilation have on contaminant levels in buildings? What are the costs associated with specific options? These questions are unlikely to include any surprises. The draft document may include preliminary estimates of risk from IAQ and/or ETS but will not include specific regulatory options.

   The draft must be reviewed and cleared by Health Standards, the Solicitor's Office and OSHA's Policy Office before being submitted to the Assistant Secretary.

   Before the draft is sent to the Assistant Secretary, an options memo (required by the Policy Review Board) will be prepared by Health Standards summarizing the document and outlining alternative approaches available to OSHA. These options will include whether to go with an RFI or an ANPR and whether to treat ETS separately from IAQ or in combination.

   The IAQ team will then meet with the Assistant Secretary or his deputy, who will decide how OSHA will proceed.

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2. When OSHA has a document to be published, the issue will be placed on the agenda for a Policy Review Board (PRB) meeting. The PRB is generally chaired by the Assistant Secretary for Policy and consists of the Deputy Secretary of Labor, Solicitor, Assistant Secretary for Legislation and others the Secretary may invite. For most OSHA regulatory action, the PRB acts essentially as a "mini-Office of Management and Budget" (OMB), raising questions of the "need" for the rule, the costs and benefits of the rule, etc. OSHA's document may be revised to meet the PRB's concerns. OSHA's current dispute on tactics is with Policy since both the Solicitor and the Assistant Secretary for Legislation should find OSHA's argument attractive for their own reasons. We might want to encourage their support for OSHA.

3. Under Executive Order 12291, OSHA must obtain OMB review of "major" regulatory actions (i.e. those having an economic impact greater than 100 million dollars). OMB history of reviewing pre-regulatory documents, such as an RFI or ANPR, is spotty. While OMB is expected to review IAQ RFI/ANPR, it is less likely to do so if OSHA proposes an RFI. The Executive Order assigns OMB the duty to evaluate costs and benefits of proposed federal regulation as well as consistency with the Administration's policy objective (i.e. is this regulation necessary or desirable), but OMB can insist on revisions to any aspect of OSHA's proposed action and could completely seek changes to form, substance and timing of the notice.

OMB may act as the enforcer of deregulatory orthodoxy. When industry is opposed to regulation, OMB often supports the regulated industry. However, when industry favors regulation OMB may, nevertheless, urge a different result.

4. One factor that could affect OSHA's decisionmaking on IAQ is any D.C. Circuit decision in ASH's lawsuit. While we do not expect ASH to prevail, the D.C. Circuit has required OSHA to submit regulatory timetables to the court for review and has insisted that OSHA adhere to those timetables in similar lawsuits involving other substances.

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